

*Recording requested by and  
when recorded return to:*

Department of Community Development  
City of Sun Valley  
81 Elkhorn Road, P.O. Box 416  
Sun Valley, Idaho 83353

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(Space Above for Recorder's Use)

## **DEVELOPMENT AGREEMENT**

**(ZMA 2021-01)**

This Development Agreement (this “**Agreement**”) is made effective as of the date identified in Section 7 hereof (the “**Effective Date**”) by and between the City of Sun Valley, Idaho, an Idaho municipal corporation (“**City**”) and the Sun Valley Community School, Inc., an Idaho corporation (“**School**”).

### **RECITALS**

A. As of the Effective Date, School is the current owner of the real property located at 1, 200, 201, 203, 205, and 207 Arrowleaf Road, Sun Valley, Idaho 83353 legally described on Exhibit A, attached hereto and made a part hereof (the “**Property**”).

B. The Property is currently zoned Open Recreation (OR-1) and Rural Estate and Ranch (RA).

C. School has applied to City for a rezone to Open Space (OS), Recreation (REC), Public-Institution (PI), and Multiple-Family Residential (RM-1) so that School may develop the Sagewillow and Arrowleaf campus areas, all as set forth in more detail in Sun Valley Application No. ZMA 2021-01.

D. Pursuant to Sun Valley Municipal Code (“City Code”) § 9-5B-4 and Idaho Code § 67-6511A, City has the authority to conditionally rezone the Property and to enter into a development agreement for the purpose of allowing, by agreement, a specific development to proceed in a specific area and for a specific purpose or use which is appropriate in the area, but for which the requested zoning may not be consistent with Idaho Code and City Code; and

E. City has properly noticed and held the public hearings required by law for the zoning and planned development of the Property, and for this Agreement; and

F. It is the intent of the Parties to enter into this Agreement to allow the Property to be developed as provided in this Agreement, subject to the terms and conditions hereof.

## AGREEMENT

NOW THEREFORE, in consideration of the above recitals and the covenants, duties and obligations herein set forth, the sufficiency of which consideration is hereby acknowledged, City and School agree as follows:

1. **Property** (Location, Description; Size; Prior Zoning; Requested Zoning)

Location:

- 1 Arrowleaf Road (Blaine County Parcel No. RPS047600000A0) consisting of +/- 31.890 acres;
- 200 Arrowleaf Road (Blaine County Parcel No. RPS04030000050) consisting of +/- 1.609 acres;
- 201 Arrowleaf Road (Blaine County Parcel No. RPS04030000040) consisting of +/- 1.081 acres;
- 203 Arrowleaf Road (Blaine County Parcel No. RPS04030000030) consisting of +/- 1.002 acres;
- 205 Arrowleaf Road (Blaine County Parcel No. RPS04030000020) consisting of +/- 1.255 acres;
- 207 Arrowleaf Road, (Blaine County Parcel No. RPS04030000010) consisting of +/- 1.553 acres; and
- No Address Arrowleaf Road (Blaine County Parcel No. RPS040300000DD0) consisting of +/- 3.530 acres

Description: As set forth on Exhibit A.

Size: +/- 41.92 acres

Current Zoning: OR-1, RA

Requested Zoning: OS, REC, PI and RM-1

2. **Permitted Uses.** The sole uses of the Property that are allowed on the Property pursuant to this Agreement are (the “**Permitted Uses**”):

- Multi-family Residential in the RM-1 zone;
- If a K-6 non-residential elementary school were ever considered in the PI zone, the School may not begin construction on the school until fifteen (15) years after the Effective Date of this Agreement;
- All uses that are permitted or conditionally allowed in the OS, REC, PI and RM-1 zoning districts;
- Other accessory uses to the above primary uses as identified in City Code; and

- The current uses of the Property as interim uses until development of the Property pursuant to this Agreement, and which current uses may be improved or expanded in accordance with City Code.

The Permitted Uses will not be changed without modification of this Agreement in accordance with City Code. The Community Development Director will have the discretion and authority as set forth in City Code to determine what uses are deemed to be “accessory” to other Permitted Uses.

3. **Development of the Project.** Any new improvements and site work to be constructed on the Property pursuant to this Agreement (the “**Project**”) will be:
  - a. Generally, in accordance with the conceptual plans attached hereto as Exhibit B and made a part hereof (the “**Conceptual Plans**”);
  - b. In compliance with the conditions of approval set forth in Exhibit C (the “**Conditions of Approval**”);
  - c. Consistent with the development standards set forth in Section 4 below; and
  - d. Otherwise in compliance with applicable law.

City may decline to grant any building permits for the Property for new improvements or site work on the Property that are inconsistent with this Section 3. Construction of any new improvements or site work on the Property in violation of this Section 3 will constitute a material default of this Agreement.

4. **Development Standards.** The following provisions, requirements and conditions will apply to the development of the Project on the Property:
  - a. **Development Type and Density.** The Property shall be developed as conceptually described and illustrated in the Conceptual Plans and as conditioned in Exhibit C. The Project will include a maximum of 40 dwelling units.
  - b. **Deviations from Conceptual Plans.** The Conceptual Plans are intended to be conceptual only, and some deviations from the Conceptual Plans are normal and expected (1) for the design of the Project to be further refined in a manner that is functional and aesthetically pleasing; (2) to allow for normal input from City staff, City officials, and the public during any subsequent required city process; and (3) to allow the Project design to address practical and engineering issues, including building and/or fire code issues that may arise during the development process. Accordingly, the City staff (or other review body as applicable) will have the authority to approve minor deviations from the Conceptual Plans, including but not limited to the ordinarily applicable required process (i.e., both staff level decisions and

Planning and Zoning Commission level decisions). Substantial deviations from the Conceptual Plans must be approved by the Sun Valley City Council through an amendment to this Agreement. The Community Development Director will have the discretion and authority to determine whether deviations are “minor” or “major.”. Changes of the following types shall define an amendment as major:

- i. Changes which would modify or reallocate the allowable building height, mix of uses, or density of a development; or
- ii. Changes which would alter the location or amount of land dedicated to open space, amenities, trails, natural areas or public facilities; or
- iii. Modify any other aspect of the Conceptual Plans that would significantly change its character; or
- iv. A series of minor amendments that cumulatively change the overall character of the Conceptual Plans. Minor Amendments: Amendments that are not major amendments shall be termed "minor amendments" and shall be reviewed by the director.

- c. **Building Form and Scale.** The maximum building height for all new residential buildings on the Property, excluding rooftop appurtenances allowable in each zoning district, may not exceed two-stories.
  - d. **Parking.** Parking for the multi-family component of the Project shall be as set forth in Sun Valley Code § 9-3E-4(A).
  - e. **Pathway.** Concurrently with the issuance of the first building permits for a residential building, School shall install a sidewalk adjacent to Arrowleaf Road.
5. **Residential Employee Preference.** The School intends to provide preference for the multi-family dwelling units to families where at least one person is a current, past or future employee of the School or a mission-aligned entity located within the Wood River Valley region.
6. **Affordability Covenant.** School desires to make some dwelling units of the Property affordable to tenants with a family income that is not less than 80% AMI for the tenant’s applicable family size and not more than 140% AMI for a tenant’s applicable family size, pursuant to the terms of that certain “Affordability Covenant” provided by School to City

and which may be executed and recorded subject to City's acceptance of the benefit described therein.

7. **Default.**

- a. School will be in material default of this Agreement if School uses or develops the Property in violation of the terms of this Agreement (e.g., changes or expands the use of the Property beyond that permitted by this Agreement), or if School otherwise fails to faithfully comply with all of the terms and conditions of this Agreement.
- b. Neither party will be deemed to be in default of this Agreement until the non-defaulting party gives the defaulting party a written notice specifying the asserted default in reasonable detail and providing the defaulting party thirty (30) days to cure such default; provided, however, if the default cannot reasonably be cured within such 30-day period, the defaulting party will have a reasonable period to cure such default. In the event of a default by School that creates an emergency that threatens public health and safety, then City's notice obligations and the cure period will be as City determines to be reasonable in light of the circumstances.
- c. If School is in default, then City may (1) seek specific performance of School's obligations; (2) withhold issuance of any development permits or approvals until such default is cured; and/or (3) exercise the special remedies in Section 8 hereof.
- d. If City defaults, School may seek specific performance of City's obligations.
- e. Except as expressly provided herein, neither party shall be entitled to monetary damages for any claims relating to or arising in connection with this Agreement.
- f. City's waiver of any default by School of any one or more of the covenants or conditions of this Agreement will apply solely to the defaults waived and will not be construed as a general waiver or waiver of any other covenants or conditions, nor affect City's rights or remedies as to any subsequent default of the same or other covenants and conditions.

8. **City's Special Remedies.** In addition to the remedies identified in Section 7.c, in the event of an uncured default by School, City may exercise any of the following special remedies after compliance with the applicable requirements of City Code:

- a. **Amendment.** If the Sun Valley City Council determines that School's default warrants an amendment to this Agreement, then the Sun Valley City Council will have the unilateral power to amend this Agreement to condition, restrict or eliminate any Permitted Uses. Upon adoption and recordation of such an

amendment, School will comply with this Agreement as so amended, and any failure to comply will be a material default of this Agreement.

- b. Termination.** If the Sun Valley City Council determines that School's default warrants the termination of this Agreement, then the Sun Valley City Council will have the power to terminate this Agreement by adoption and recordation of a termination instrument. In such event, School shall cause all uses which are not consistent with the prior zoning to cease, except as otherwise approved by City. **School hereby acknowledges and agrees (for itself and any future owner of the Property) that, if City terminates this Agreement for School's default, then City will have the right to rezone of the Property to the Property's prior zoning classification, or to any other lawful zoning classification that City deems appropriate for the Property.**

9. **Effective Date.** This Agreement will be effective on the date that City has adopted and published an ordinance by the Sun Valley City Council re-zoning the Property pursuant to Application No. ZMA 2021-01(the "**Rezoning Ordinance**").
10. **Notices.** All notices required to be given by either party under this Agreement must be in writing and will be deemed delivered upon personal service (if delivered by hand or courier) or when mailed by United States certified mail, return receipt requested, addressed as follows:

To City:                      Community Development Director  
City of Sun Valley  
81 Elkhorn Avenue  
PO Box 416  
Sun Valley, Idaho 83353

To School:                    Sun Valley Community School  
Attn: Director of Communications and Marketing  
1 Community School Drive  
Sun Valley, Idaho 83353

City may change its address by notice to School or general notice to public (including updates on City's public website). School agrees to keep its current mailing address on file with City, the Blaine County Assessor, and Idaho Secretary of State.

11. **Shared Legal Defense Costs.** In the event that any legal or equitable action or other proceeding is instituted by a third-party challenging the validity of any provision of this Agreement, the Parties will reasonably cooperate in defense of such action or proceeding. The City and School may agree to select mutually agreeable legal counsel to defend such action or proceeding with the Parties sharing equally in the cost of such joint legal counsel, or each Party

may select its own legal counsel at each Party's expense. All other costs of such defense(s) shall be shared equally by the Parties. Each Party retains the right to pursue its own independent legal defense

12. **Attorneys' Fees.** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party will be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction. This provision will be deemed to be a separate contract between the parties and will survive any default, termination, or forfeiture of this Agreement.
13. **Governing Law and Venue.** The rights and obligations of City and School under this Development Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Idaho. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Blaine County, Idaho.
14. **Modification.** Except as set forth in Section 8, this Agreement may not be modified except with the consent of City and School, and then only by written instrument duly executed, acknowledged and recorded in the real property records of Blaine County, Idaho.
15. **Binding upon Successors.** This Agreement will be binding upon every successor in interest, assign, and/or person or entity having any fee, leasehold or other interest in the Property. This Agreement shall run with the land.
16. **Release Upon Transfer.** The term "School" means only the then-current fee simple owner of the Property. School is obligated to perform its obligations only during the time such School owns fee simple title to the Property. Any owner who transfers its title to the Property is relieved of all liabilities for the obligations of School under this Agreement to be performed on or after the date of transfer.
17. **Joint and Several Liability.** If School is composed of more than one person or entity, then all persons or entities comprising School will be jointly and severally obligated to perform the obligations of School under this Agreement.
18. **Recordation.** City will record this Agreement (including all exhibits attached hereto) in the real property records of Blaine County, Idaho prior to adopting and publishing the Rezoning Ordinance. If for any reason after such recordation the Sun Valley City Council fails to adopt such an ordinance, City will execute and record an appropriate instrument releasing this Agreement.
19. **Invalid Provisions.** If any provision of this Agreement is invalid, illegal, or unenforceable under the applicable law, then the provision will be deemed to be excised

from this Agreement and the validity and enforceability of the remaining provisions of this Agreement will not be affected thereby.

20. **Force Majeure.** A Party will not be in default of this Agreement for any reason beyond the Party's reasonable control and ability to avoid such that it is impossible or imminently impracticable to perform the Party's obligations ("Force Majeure Event"). A Force Majeure Event may include but is not limited to acts of God, war, terrorism, strikes, riots, natural disasters, pandemic or epidemic outbreaks, government action or regulation, or similar events. Economic circumstances and conditions do not constitute a Force Majeure Event. Reasonable extensions, proportionate to the extent of the Force Majeure Event, will be provided without penalty or additional cost to either Party.
21. **Interpretation.** Where the context requires, words importing the singular will include the plural and vice versa, and words importing persons will include entities. Headings are for convenience of reference only. Where the context requires, any reference to a person, entity or party will include the person's, entity's or party's successors and permitted assigns. The word "include" or "including" are to be construed without limitation. Each party has been represented by legal counsel in drafting and negotiating this Agreement, so the parties agree that the normal rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.
22. **No Third-Party Beneficiaries.** City and School are the only beneficiaries of this Agreement. No person will be a third-party beneficiary hereof, and no tenant will have the right to enforce this Agreement. If any person believes that School has not complied with the terms of this Agreement, then the person may notify City thereof. Nothing in this Development Agreement will give rise to a damages claim against School or City, it being the intent that the exclusive remedies for default are set forth above.
23. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single document so that the signatures of all Parties may be physically attached to a single document.
24. **Further Acts.** Each of the Parties shall promptly execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

*[End of text; Counterpart signature pages and Exhibits follow]*

COUNTERPART SIGNATURE PAGE

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

City: **CITY OF SUN VALLEY,**  
an Idaho municipal corporation

By: \_\_\_\_\_  
Peter Hendricks  
Mayor

ATTEST:

By: \_\_\_\_\_  
Nancy Flannigan  
City Clerk

STATE OF IDAHO    )  
                                  ) ss.  
County of Blaine    )

This record was signed before me on \_\_\_\_\_ by Peter Hendricks as Mayor, and by Nancy Flannigan as City Clerk, of City of Sun Valley, Idaho.

\_\_\_\_\_  
Notary Signature

COUNTERPART SIGNATURE PAGE

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

School: **SUN VALLEY COMMUNITY SCHOOL**  
an Idaho corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_ by  
\_\_\_\_\_ as \_\_\_\_\_ for the Sun Valley Community School, an Idaho  
corporation.

\_\_\_\_\_  
Signature of Notary Public

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

**EXHIBIT B**  
**CONCEPTUAL PLANS**

**EXHIBIT C**  
**ACTION LETTER FROM SUN VALLEY CITY COUNCIL**  
**(with Conditions of Approval)**

[ Date Letter; (xx) Pages]